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ROLLIT, LLC, REX PRODUCTS INC.,  
MK ENTERPRISES, INC., and  
MAURICE KANBAR

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

3M COMPANY,

Plaintiff,

v.

MAURICE KANBAR, MK ENTERPRISES  
INC., ROLLIT, LLC, AND REX PRODUCTS  
INC.,

Defendants.

Case No. C 06-01225 JW (HRL)

**AMENDED JOINT STIPULATED  
PROTECTIVE ORDER AS AMENDED  
BY THE COURT**

WHEREAS, discovery (including interrogatories, requests for admission, document requests, and depositions) in the above-entitled action may involve the production or disclosure of trade secrets or sensitive commercial, financial, or business information;

1 WHEREAS, there is good cause for protecting the parties' trade secret and confidential  
2 information from unnecessary disclosure; and

3 WHEREAS, counsel for the parties herein have agreed to entry of this Order;

4 IT IS HEREBY ORDERED:

5 1. The provisions of this Order shall apply to (i) the named parties to this action; (ii)  
6 Qualified Persons, as defined below, and (iii) counsel for the named parties to this action. As used  
7 herein, "person" includes the named parties and others who have agreed to be bound by this Order  
8 (including Qualified Persons); "parties" is limited to the named parties in this action. The  
9 restrictions contained in this Order shall apply to both documents (including all copies, excerpts,  
10 and summaries thereof) and information. The term "material" shall be used herein to refer to  
11 documents and information.

12 2. Any person may designate as "CONFIDENTIAL" any non-public material that it  
13 produces in the course of discovery proceedings herein when such material warrants protection  
14 under Fed. R. Civ. P. 26(c). Persons shall act in good faith when determining which materials are  
15 designated as CONFIDENTIAL. Except as otherwise provided herein, CONFIDENTIAL  
16 material shall be subject to the following restrictions:

17 (a) CONFIDENTIAL material shall be used only for the purpose of this  
18 litigation (Case No. C 06-01225 JW) and not for any business or other purpose whatsoever.  
19 CONFIDENTIAL material produced in this proceeding may be disclosed only to the following  
20 Qualified Persons:

21 (i) Outside counsel presently of record, including those appearing *pro*  
22 *hac vice* for a party in this lawsuit including their members and associate attorneys and persons  
23 employed by outside counsel in para-professional, clerical, stenographic, photocopying, or  
24 ministerial positions;

25 (ii) The in-house attorneys identified below who (i) do not participate in  
26 competitive decisions concerning pricing, product design, research and development, patent  
27 prosecution, or other business-related decision making relating to stationery and/or office products  
28 including without limitation adhesive backed products such as sticky notes, (ii) will agree in

1 writing, in the form annexed hereto as Exhibit A to this Protective Order, to be bound by the  
 2 provisions of this Order, before being shown such CONFIDENTIAL material, and (iii) will only  
 3 be shown CONFIDENTIAL material to the extent necessary to participate in, assist in and  
 4 monitor the progress of this action and for no other purpose, (including persons employed by such  
 5 an in-house attorney in para-professional, clerical, stenographic, photocopying, or ministerial  
 6 positions), provided before receiving such CONFIDENTIAL material the party seeking to have a  
 7 qualifying in-house attorney receive such CONFIDENTIAL material certifies to the other party  
 8 that the in-house counsel who shall receive CONFIDENTIAL materials does not participate in the  
 9 activities identified earlier in this section. 3M designates Kevin H. Rhodes and Michael L.  
 10 Gannon as its in-house attorneys who may receive CONFIDENTIAL material and certifies that  
 11 Mr. Rhodes and Mr. Gannon do not participate in competitive decisions concerning pricing,  
 12 product design, research and development, patent prosecution, or other business-related decision  
 13 making relating to stationery and/or office products including without limitation adhesive backed  
 14 products such as sticky notes. Defendants designate Michelle L. Landry and Rachel Warren as  
 15 their in-house attorney who may receive CONFIDENTIAL material and certify that Ms. Landry  
 16 and Ms. Warren do not participate in competitive decisions concerning pricing, product design,  
 17 research and development, patent prosecution, or other business-related decision making relating  
 18 to stationery and/or office products including without limitation adhesive backed products such as  
 19 sticky notes.

20 (iii) Two non-attorney employees of the parties who will agree in  
 21 writing, in the form annexed hereto as Exhibit A to this Protective Order, to be bound by the  
 22 provisions of this Order, before being shown such CONFIDENTIAL material, but only to the  
 23 extent necessary to participate and assist in this action and for no other purpose;

24 (iv) The Court and its personnel;

25 (v) An officer before whom a deposition is taken, including  
 26 stenographic reporters and videographers; and

27 (vi) Subject to the provisions below, independent outside experts or  
 28 consultants retained by the parties or their Outside Counsel solely for purposes of this proceeding.

1 If a party wishes to disclose CONFIDENTIAL or "CONFIDENTIAL—COUNSEL ONLY" (as  
2 defined below) material to an independent outside expert or consultant retained for purposes of  
3 this proceeding, then such disclosure shall be permitted under the following conditions:

4 a. Prior to disclosure, the designated expert shall  
5 acknowledge in writing by signing a copy of Exhibit A attached hereto, that he or she has received  
6 and read a copy of this Protective Order, and that he or she is bound by the terms thereof.

7 b. Ten days prior to disclosure of such  
8 CONFIDENTIAL or CONFIDENTIAL—COUNSEL ONLY material a copy Exhibit A signed by  
9 the expert and a copy of the expert's curriculum vitae shall be delivered via facsimile and U.S.  
10 Mail to opposing counsel along with a request in writing to disclose CONFIDENTIAL and/or  
11 CONFIDENTIAL—COUNSEL ONLY material.

12 c. In the event that a party which has produced such  
13 CONFIDENTIAL or CONFIDENTIAL—COUNSEL ONLY material objects to its disclosure to  
14 an expert by an opposing party, such objecting party shall provide the opposing party with a  
15 written notice of objection via facsimile and U.S. Mail within the ten-day period after receiving a  
16 copy of Exhibit A signed by the expert and the expert's curriculum vitae. In such event,  
17 disclosure of the CONFIDENTIAL or CONFIDENTIAL—COUNSEL ONLY material shall not  
18 be made to such expert until the parties agree in writing that such disclosure may be made or the  
19 Court rules on the dispute. The objecting party shall with its notice of objection state fully its  
20 reasons and grounds for such objection. Failure to give written notice of the objection to the  
21 opposing party within ten days after receiving the copy of Exhibit A and the expert's curriculum  
22 vitae shall operate as a waiver of the objection.

23 d. Unless the dispute is resolved by agreement of  
24 counsel, the party seeking disclosure may move within ten days after receiving notice of any  
25 objection for a ruling by the Court on the dispute. The party seeking disclosure shall have the  
26 burden of establishing the reasonableness of the disclosure.

27 (b) Any person may designate as "CONFIDENTIAL—COUNSEL ONLY" any  
28 CONFIDENTIAL material which the person wishes to be disclosed only to persons listed in

categories (i), (ii), (iv), (v), and (vi) of this paragraph. The CONFIDENTIAL—COUNSEL ONLY designation shall be limited to CONFIDENTIAL material which contains or comprises particularly sensitive trade secrets, commercial, financial or business information, or customer identity and “contact persons” at a customer, the disclosure of which to Qualified Persons in category 2(a)(iii) may have a particularly adverse effect on the commercial, business, or financial position of the person producing it. All provisions of this Order relating to CONFIDENTIAL material apply with equal force to material designated as CONFIDENTIAL—COUNSEL ONLY, with the added restriction that those individuals listed in category (a)(iii) of this paragraph are not entitled to access such material. (Hereinafter, the term “PROTECTED” shall refer to documents and information designated either CONFIDENTIAL or CONFIDENTIAL—COUNSEL ONLY.)

(c) All pleadings or other court filings which incorporate or disclose PROTECTED material shall be filed under seal and shall remain under seal until such time as the Court orders otherwise. A party seeking to file material under seal must comply with Civil Local Rule 79-5.

(d) Any party or interested member of the public can challenge the sealing of any PROTECTED material filed with the Court.

3. PROTECTED material may be disclosed during a deposition to an employee of the party that produced the PROTECTED material. PROTECTED material may also be disclosed during a deposition to any individual who is indicated on the PROTECTED material as an author or recipient of the PROTECTED material, was copied on the PROTECTED material, had or has access to the PROTECTED material, received the PROTECTED material, the material was or is within the scope of the person’s responsibilities, or who is established prior to use of the PROTECTED material at the deposition as having personal knowledge of the PROTECTED material.

Otherwise, any party may request at any time permission to disclose PROTECTED material to a person other than those permitted under Paragraph 2 above, by serving a written request upon the producing party that states the material it wishes to disclose, to whom, and a short explanation as to why disclosure would be appropriate. The producing party shall thereafter respond to the request in writing within ten (10) days of its receipt of said request and, if consent

1 is being withheld, shall state the reasons why consent is being withheld. A failure to respond  
2 within such time shall constitute consent to the request. If the party and the producing person are  
3 subsequently unable to agree on the terms and conditions of disclosure, disclosure may be only on  
4 such terms as the Court may provide. Also, a request may be made orally to the producing party's  
5 attorney at a deposition.

6 4. Designation pursuant to Paragraph 2, above, shall be accomplished by employing  
7 the legend "CONFIDENTIAL" or "CONFIDENTIAL—COUNSEL ONLY," whichever is  
8 appropriate, as follows:

9 (a) In the case of documents, the appropriate legend shall be placed on the  
10 document prior to its production. The producing person may, at its option, permit counsel for the  
11 receiving party to inspect the documents for the purpose of designating those to be copied, and the  
12 producing party need only thereafter affix said designation to the copies of the documents  
13 designated to be copied. In this event, the receiving party will treat any information learned in its  
14 initial inspection that is not contained in the copied documents as being designated  
15 CONFIDENTIAL—COUNSEL ONLY material. The inadvertent disclosure by the supplying  
16 party of PROTECTED material without the CONFIDENTIAL or CONFIDENTIAL—COUNSEL  
17 ONLY legend appearing on the disclosed material shall not be deemed a waiver in whole or in  
18 part of a party's claim of confidentiality. Any CONFIDENTIAL or CONFIDENTIAL—  
19 COUNSEL ONLY designation that is inadvertently omitted may be corrected by written notice to  
20 opposing counsel.

21 (b) In the case of information incorporated in answers to interrogatories, the  
22 appropriate legend shall be placed on the interrogatory answers, and such answers shall be  
23 separately produced.

24 (c) In the case of material revealed during a deposition, designation of the  
25 portions of the transcript (including exhibits) shall be made by a statement to that effect on the  
26 record by counsel for the person asserting confidentiality. Thereafter, the reporter transcribing the  
27 deposition shall place in separate binders those portions of the deposition transcript that have been  
28 designated as PROTECTED, each binder corresponding to the level of confidentiality designated

1 during the deposition. It shall be the responsibility of the designating person to instruct the court  
2 reporter as to how the transcript is to be bound.

3 A person may also designate portions of the transcript (including exhibits) as  
4 PROTECTED by notifying the other parties, in writing, within fifteen (15) days after the transcript  
5 has been transmitted by the court reporter, of the specific portions of the transcript (by page and  
6 line numbers and/or exhibit numbers) that should be treated as PROTECTED. Each party shall  
7 attach a copy of such written notice(s) to the face of each copy of the transcript and any synopsis  
8 thereof in the party's possession, custody or control, and shall mark the designated pages and  
9 exhibits therein with the appropriate legend. Until fifteen (15) days have passed, the entire  
10 transcript shall be treated as CONFIDENTIAL—COUNSEL ONLY. After fifteen (15) days,  
11 material is not CONFIDENTIAL unless specifically designated.

12 5. At any time, any party may object to the propriety of any designation (or re-  
13 designation) of specific materials by serving a written objection on the producing person or its  
14 counsel. The producing person shall thereafter, within ten (10) days of service of such objections,  
15 respond to such objection by either: (a) agreeing to remove the designation; or (b) stating the  
16 reasons why the designation was made. If the objecting party and the producing person are  
17 subsequently unable to agree, the objecting party shall be free to move the Court for an Order  
18 removing the disputed designation. The burden shall be on the producing party to establish the  
19 propriety of the disputed designation. The material in issue shall continue to be treated as  
20 designated until the Court orders otherwise.

21 6. The inadvertent production of any privileged material shall not be deemed a waiver  
22 or impairment of any claim of privilege, including but not limited to the attorney-client or work-  
23 product privilege, concerning any such material or the subject matter thereof.

24 7. This Order, insofar as it restricts the communication and use of material, shall  
25 continue to be binding throughout and after the conclusion of this litigation. In addition, at the  
26 conclusion of this action, including all appeals:

27 (a) Each party shall turn over to their outside counsel all PROTECTED  
28 material produced by another person under paragraph 2, above. Also, experts shall destroy or



1 return to counsel for the party by whom they are employed all PROTECTED material or any  
 2 summaries, abstracts or indices of such material which came into his/her possession or which  
 3 he/she prepared relating thereto.

4 (b) The provisions of Paragraph 7(a) above are not applicable to any material  
 5 that became a part of the publicly available Court record in this action.

6 (c) Within sixty days after the conclusion of this litigation, unless the parties  
 7 agree in writing to the contrary, any originals or reproductions of any documents produced by a  
 8 party containing CONFIDENTIAL information shall be returned to the producing party or  
 9 destroyed and certified to the other party that the documents were destroyed. However, outside  
 10 counsel for a party shall be entitled to retain for archival purposes copies of pleadings,

11 correspondence, memoranda, notes and work product materials, which refer to or contain  
 12 CONFIDENTIAL and/or CONFIDENTIAL—COUNSEL ONLY material. The court need not return any documents.

13 8. A copy of this Order shall be given to each person (other than counsel, their  
 14 associated attorneys and persons employed by counsel in para-professional, clerical, stenographic,  
 15 photocopying or ministerial positions) who will receive material designated under Paragraph 2  
 16 before being shown such material, and each such person shall be expressly advised that such  
 17 material shall not be used or further disclosed contrary to the terms of this Order.

18 9. Materials, including documents and/or deposition testimony, obtained from any  
 19 persons who are not parties, by subpoena or otherwise, shall be treated as CONFIDENTIAL—  
 20 COUNSEL ONLY unless such materials and documents were previously published and/or  
 21 distributed publicly.

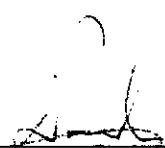
22 10. Nothing in this Order shall bar or otherwise restrict any attorney herein from  
 23 rendering advice to his or her client with respect to this litigation and, in the course thereof,  
 24 relying upon his or her examination of, but without disclosing, CONFIDENTIAL and/or  
 25 CONFIDENTIAL—COUNSEL ONLY material.



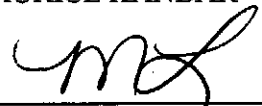
11. Any party may, on notice, apply to the Court at any time for modification of this Order.

**AGREED TO BY THE PARTIES:**

3M COMPANY

  
David J. Miclean  
FISH & RICHARDSON P.C.  
500 Arguello Street, Suite 500  
Redwood City, California 94063

ROLLIT, LLC, REX PRODUCTS INC.  
MK ENTERPRISES INC.,  
MAURICE KANBAR

  
Michelle L. Landry (#190080)  
2100 Jackson Street  
San Francisco, California 94115

**SIGNED:**

  
Howard R. Lloreda  
United States Magistrate Judge

Dated: 11/29/06

**EXHIBIT A**

To Protective Order Entered on \_\_\_\_\_, 2006

I, \_\_\_\_\_, being duly sworn, state that:

I have carefully read the Protective Order entered by the Court on \_\_\_\_\_, 2006 in the case styled *3M Company v. Rollit, LLC et al.*, Case No. C 06-01225 JW, and agree to be bound by and comply with all of the provisions of the Protective Order.

I will hold in confidence and not disclose to anyone not qualified under the Protective Order any CONFIDENTIAL or CONFIDENTIAL—COUNSEL ONLY material or any words, summaries, abstracts, or indices of such material.

Upon counsel's request, I will destroy or return to counsel for the party by whom I am employed or retained all CONFIDENTIAL or CONFIDENTIAL—COUNSEL ONLY material or any words, summaries, abstracts or indices of such material which come into my possession or which I have prepared relating thereto.

Pursuant to Paragraph 8 of the Protective Order, so as to enable me to review the material encompassed by the Order, I hereby agree to be bound by all the provisions of the Protective Order.

I understand that if I violate the terms of the Protective Order, I may be subject to an enforcement proceeding before the Court.

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

State of \_\_\_\_\_ )  
 \_\_\_\_\_ ) SS.  
 County of \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2006, \_\_\_\_\_, known to me, came before me and executed this document.

\_\_\_\_\_  
 NOTARY PUBLIC